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S.E.C.'s New Enforcement Chief

By NATHANIEL C. NASH

WASHINGTON

LAST year, when John M. Fedders, enforcement chief of the Securities and Exchange Commission, removed himself from the R. Foster Winans insider trading case because his former law firm was involved in the defense, his deputy, Gary G. Lynch, assumed responsibility for the prosecution. That shift, as it turned out, was prophetic.

In February, Mr. Fedders resigned abruptly from the top enforcement job in the wake of publicity over a divorce action in which he admitted having beaten his wife. Mr. Lynch was appointed temporary enforcement chief then. And last week, John S.R. Shad, the S.E.C.'s chairman, announced Mr. Lynch's permanent appointment as the agency's top policeman.

In choosing Mr. Lynch, the commission's chairman not only gave a vote of confidence to the S.E.C.'s career attorneys, but also insured that the agency's enforcement program would not be thrown off course. As the No. 2 enforcement official since 1982, Mr. Lynch had played a major role in the execution of that program under the guidance of Mr. Shad and Mr. Fedders.

Mr. Lynch came to the commission in 1976, when he was only 25 years old, and cut his teeth during the tenure of Stanley Sporkin, the aggressive and controversial enforcement chief whose admirers said he thrust the concept of corporate morality into the boardroom and whose detractors claimed he was an overbearing enforcer who distorted the intent of securities laws. As Mr. Lynch stayed on through the Fedders years, insider trading and fraudulent corporate accounting practices became the division's primary targets.

Now that the 34-year-old, soft-spoken attorney is ensconced in his new position, he says he does not plan to alter the commission's course significantly. Instead, he says, he will continue to go after insider trading and "cooked books" as he tries to expand the division's activities in two areas: illegal takeover filings and illegal trading through foreign intermediaries. "I like the direction of our enforcement policy, and I think things are working very well," Mr. Lynch said. "We have a good mix of enforcement cases in the pipeline."

Both S.E.C. insiders and outsiders are predicting little change in the division's direction in the short term. "I am not persuaded that the mere change from Fedders to Lynch is necessarily going to change the complexion of the enforcement division's focus," said Harvey Pitt, an attorney at the Washington law firm of Fried, Frank, Harris, Shriver & Kampelman. "He'll make some changes," predicted Kathryn B. McGrath, director of the S.E.C.'s investment management division, "but you won't see the evidence of those changes until further down the road."

For now, Mr. Lynch is sweeping into office accompanied by a chorus of praise. In fact, it is difficult to find anyone who will speak ill of the youthful enforcer. Even the Democrats on Capitol Hill seemed to cheer when he was appointed. And the Fedders — now Lynch — enforcement program has generally received high marks from Wall Street and Capitol Hill.

BUT the enforcement climate is far from idyllic these days. Some in Washington see Mr. Lynch's division as severely understaffed and incapable of dealing effectively with the new outbreak of violations in the ever-expanding securities markets. Others fault the division for concentrating on insider trading and financial fraud and neglecting other types of abuses, such as inaccurate and misleading takeover filings. Still others say that not enough insider trading cases have been brought by the division.

"It is understaffed, it is understaffed, it is understaffed," said Joel Seligman, a professor at George Washington University's National Law Center, echoing a view expressed in a recent study by the General Accounting Office (see box). "To have the deterrent force the S.E.C. needs, you have to have a larger caseload," said Mr. Seligman.

"If we had more people we could do more cases," said Mr. Lynch. "But I do not believe there are major abuses that we are not able to address." Mr. Lynch says the division employs 110 lawyers in its Washington headquarters. And, he says, he supervises the enforcement efforts of about 400 people in the commission's nine regional offices. The division's current budget is $34 million annually, he says, out of $106 million budgeted for the entire commission.

But there may well be abuses that the division cannot address without a beefed-up effort, warns Mr. Seligman, referring to the explosive proliferation of investment instruments underway. Using the example of options trading, he noted that "there are certain exchanges, such as the Pacific, where you trade both the stock and the option, albeit on different floors. The difference between one floor and another is a 30-second run. Using well-positioned traders and some hand signals, if you see something happen in the stock you can trade that option in less than a minute. To stop this requires some intensive enforcement."

Perhaps the biggest test facing Mr. Lynch will be how to deal with abuses that arise from the recent rash of corporate takeovers. Securities law requires accurate and timely filings of so-called 13-D reports when an investor acquires at least 5 percent of a company's outstanding securities. Moreover, the offer and counteroffer maelstrom, which pushes prices higher and higher, raises issues of price manipulation as well as insider trading.

The new enforcement chief responds by pointing out that the division has several "very significant" takeover cases in the works, as well as cases involving so-called greenmail arrangements that companies failed to disclose. In the future, he says, the division will devote even more resources to investigating hostile takeovers.

THAT move, he says, is inevitable, because as both he and Mr. Shad repeatedly assert, the enforcement division is continually responding to changes in the marketplace. Their insider trading and accounting fraud caseload, they say, springs from the takeover surge in the late 1970's and from the deep 1982 recession that pressured companies to show better earnings. And, said Mr. Lynch, "obviously, we have devoted a lot of resources in the last two months to Government securities."

A major area of future concentration, Mr. Lynch said, will be the illegal securities trading conducted through foreign investment firms and banks. "Over the last three or four years, the amount of trading we have investigated offshore has increased exponentially," Mr. Lynch said. But, he insists, foreign governments with bank secrecy laws have been slow to

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